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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. COREY JASON LEWIS, Defendant and Appellant.	B205493 (Los Angeles County Super. Ct. No. BA329386)

APPEAL from a judgment of the Superior Court of Los Angeles County, Peter Espinoza, Judge. Affirmed.

David D. Martin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Corey Jason Lewis appeals from the judgment entered following his plea of guilty to possession of marijuana for sale, made after the trial court denied his suppression motion. The trial court sentenced Lewis to a prison term of three years. Lewis contends the trial court erred by denying his suppression motion. We disagree, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 18, 2007, an information was filed charging Lewis with possession of marijuana for sale (Health & Saf. Code, § 11359). It further alleged that Lewis had suffered six prior convictions and had served six prior prison terms within the meaning of Penal Code section 667.5, subdivision (b), and had suffered one prior "strike" conviction (Pen. Code, §§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)).

1. *Motion to suppress.*

Lewis moved to suppress evidence. (Pen. Code, § 1538.5.) A hearing was conducted, at which the following evidence was adduced. Los Angeles Police Department Officers Carlos Escobar and Raymond Corrales testified that on September 21, 2007, they were conducting undercover operations in the area of West Seventh and Lucas Streets in Los Angeles. Both were dressed in plainclothes. At approximately 7:00 p.m., the officers observed Lewis exit the City Center Motel. The motel was known for prostitution and narcotics activity, and was frequented by gang members.

As Lewis exited the motel, he looked "in all directions" and walked toward the officers. Officer Escobar attempted to engage Lewis in small talk, asking " 'Hey, what's going on?' " " 'What's going on around the area? What's up?' " Lewis stopped next to Escobar and replied, " 'I don't know nothing.' " Escobar then produced his badge and stated, " 'I'm a police officer. Are you on parole or probation?' " Lewis replied that he was on parole for a drug offense. Escobar asked whether Lewis had "any drugs on him." In what turned out to be something of an understatement, Lewis replied, " 'I got a little

bit of weed on me.' "[1] Corrales then searched Lewis. Lewis was not handcuffed or restrained prior to his admissions he was on parole and possessed marijuana.

Lewis similarly testified that Corrales and Escobar approached him and asked " 'Hey, who's' – 'what's up? Who's got the shit?' " However, according to Lewis, he kept walking. He looked over his shoulder and stated, " 'I don't know.' " One of the officers said, " 'Hey.' " Lewis looked back. Escobar told him "come here," and displayed his badge. In response to Escobar's query, Lewis admitted that he was on parole. The officers handcuffed and searched him.

Lewis argued at the hearing that he was detained without reasonable suspicion, in violation of his Fourth Amendment rights. He urged that the officers' act of displaying their badges, coupled with their query whether he was on parole, was tantamount to a command to stop and constituted an unlawful detention. The trial court denied the motion to suppress.

2. *Lewis's guilty plea and sentence.*

Lewis then pleaded guilty and admitted the prior conviction allegations. Pursuant to a negotiated disposition, the trial court sentenced him to three years in prison and struck the prior "strike" conviction. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497). It imposed a restitution fine, a suspended parole restitution fine, a laboratory analysis fee, and a court security fee.

DISCUSSION

The trial court properly denied Lewis's motion to suppress.

1. *Applicable legal principles.*

The Fourth Amendment guarantees the right to be free of unreasonable searches and seizures by law enforcement personnel. (U.S. Const., 4th Amend.; *Terry v. Ohio* (1968) 392 U.S. 1, 8–9; *People v. Maury* (2003) 30 Cal.4th 342, 384; *People v. Camacho* (2000) 23 Cal.4th 824, 829–830; *In re H.M.* (2008) 167 Cal.App.4th 136, 142.)

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[1] Testimony adduced at the preliminary hearing revealed that Lewis possessed 43 baggies of marijuana.

Challenges to the admissibility of a search or seizure must be evaluated solely under the Fourth Amendment. (*People v. Carter* (2005) 36 Cal.4th 1114, 1141.)

When reviewing the trial court's denial of a suppression motion, we defer to the trial court's express or implied factual findings if supported by substantial evidence, but exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment. (*People v. Maury, supra*, 30 Cal.4th at p. 384; *People v. Camacho*, *supra*, 23 Cal.4th at p. 830; *People v. Jenkins* (2000) 22 Cal.4th 900, 969.) To determine whether a particular encounter constitutes a seizure, we must consider the totality of the circumstances. (*People v. Bouser* (1994) 26 Cal.App.4th 1280, 1283.)

"Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty." (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.) "Consensual encounters do not trigger Fourth Amendment scrutiny." (*Ibid.*; *People v. Garry* (2007) 156 Cal.App.4th 1100, 1106.) In order to lawfully detain an individual, an officer must have a reasonable, articulable suspicion that the person has committed or is about to commit a crime. (*In re Manuel G., supra,* at p. 821; *Illinois v. Wardlow* (2000) 528 U.S. 119, 123; *People v. Durazo* (2004) 124 Cal.App.4th 728, 734.)

A "detention does not occur when a police officer merely approaches an individual on the street and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur. [Citations.]" (*In re Manuel G., supra*, 16 Cal.4th at p. 821; *People v. Bennett* (1998) 68 Cal.App.4th 396, 402; *People v. Garry, supra,* 156 Cal.App.4th at p. 1106; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227.) There is no bright-line distinction between a consensual encounter and a

detention, and to make such a determination we examine the totality of the circumstances. (*In re Manuel G., supra,* at p. 821; *People v. Verin* (1990) 220 Cal.App.3d 551, 556.) "Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.] The officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred." (*In re Manuel G., supra,* at p. 821; *People v. Garry, supra,* at p. 1106.)

A suspicionless search may be conducted of a parolee. Penal Code section 3067, subdivision (a) provides that all parolees from state prison are subject to "search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause." (See *Samson v. California* (2006) 547 U.S. 843 [upholding constitutionality of Penal Code section 3067].) A police officer therefore may search a parolee and any property under his or her control even in the absence of reasonable suspicion, as long as the search is not arbitrary, capricious, or harassing. (*People v. Hunter* (2006) 140 Cal.App.4th 1147, 1152.) "A suspicionless parole search is constitutionally permissible because the parolee lacks a legitimate expectation of privacy and the state has a substantial interest in supervising parolees and reducing recidivism." (*Id.* at p. 1152.) However, an otherwise unlawful search may not be justified by the circumstance that a suspect was subject to a search condition unless the law enforcement officer was aware of the condition when he or she conducted the search. (*People v. Sanders* (2003) 31 Cal.4th 318, 335; *Myers v. Superior Court* (2004) 124 Cal.App.4th 1247, 1251-1252.)

2. *Application here.*

In the instant case, substantial evidence supports the conclusion that the encounter between Lewis and the officers was consensual. The officers did not employ words, gestures, or other coercive conduct to detain Lewis before Lewis admitted he was on parole and possessed marijuana. Nothing in the federal Constitution prevents a police

officer " ' "from addressing questions to anyone on the streets[.]" ' " (*People v. Bennett, supra,* 68 Cal.App.4th at pp. 401-402.) Like every citizen, police officers are free to address questions to other persons, who are free to ignore the interrogator and walk away. (*Id.* at p. 402.)

Such was the case here. The evidence suggests Lewis was at all times free to disregard the officer's questions and walk away. The officers were not in uniform, a factor which – contrary to Lewis's argument – in our view tends toward a showing the encounter was consensual rather than the opposite. The officers did not display or use weapons, or make any show of force. Until Lewis admitted being on parole *and* possessing marijuana, the officers did not touch or restrain him. They were on foot, with no patrol vehicle visible nearby. They did not block Lewis's path or chase after him. They did not shine a police vehicle spotlight or other light on him. They did not run at or yell at him. They did not command him to do anything.[2] The record does not suggest they spoke to Lewis in a forceful or hostile manner. Although two plainclothes officers were present,[3] the encounter was brief and casual enough that we do not view this factor as significant in the totality of the circumstances. While Lewis may have felt he was "the object of official scrutiny, such directed scrutiny does not amount to a detention." (*People v. Perez* (1989) 211 Cal.App.3d 1492, 1496.)

Thus, the circumstances that typically demonstrate a detention rather than a consensual encounter were not present. (See, e.g., *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1254 [consensual encounter when officer and his partner engaged

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[2] Lewis testified that Escobar instructed him, "come here." However, Escobar did not testify to such a statement, and the trial court was not obliged to accept Lewis's testimony.

[3] Officer Escobar testified that a third plainclothes officer, Eastburn, was also in the vicinity on the east side of the motel, while Escobar and Corrales were on the west side. However, Eastburn was not standing with Officers Escobar and Corrales, did not identify himself as a police officer, did not have any contact with Lewis, and did not participate in the search of Lewis. Lewis appears to have been unaware of Eastburn's presence. Therefore, Eastburn's presence at the motel is irrelevant to our inquiry.

defendant in a brief conversation and then asked for his identification]; *People v. Franklin* (1987) 192 Cal.App.3d 935, 938-942; *People v. Perez, supra,* 211 Cal.App.3d at p. 1494 [consensual encounter when officer tapped on the driver's side window of a parked car with a lit flashlight, and asked the defendant to roll down his window]; cf. *People v. Jones* (1991) 228 Cal.App.3d 519, 523 [detention where police officer pulled patrol vehicle near defendant and commanded him to stop]; *People v. McKelvy* (1972) 23 Cal.App.3d 1027, 1034 [detention where four uniformed, armed officers exited their patrol car, spotlighted defendant, and asked him to hand over an object he had placed in his pocket].) In short, the totality of circumstances does not suggest a reasonable person would have believed he was not free to leave.

Several cases inform our analysis. In *In re Manuel G., supra,* 16 Cal.4th 805, a deputy approached a juvenile whom he recognized as a gang member. The deputy exited his patrol car and the minor continued walking toward him. The deputy asked, " 'Hey, can I talk to you?,' " and explained he wished to discuss a gang-related shooting. (*Id.* at p. 811.) The minor responded that he had no information. The deputy continued to talk to the minor, asking him whether he knew of circumstances involving the case. The minor stated that he was going to complain to authorities about the deputy's conduct, and that he was tired of the sheriff's department contacting him. On these facts, the California Supreme Court concluded the deputy had not detained the minor, and the encounter was consensual. (*Id.* at pp. 811, 820.) The minor walked toward the deputy and answered questions when asked. The deputy "did not draw his gun or deter or stop the minor from continuing what he was doing." (*Id.* at p. 822.) "Approaching the minor in a public place and asking him questions were not actions in themselves constituting coercive police conduct that would lead a reasonable person to believe that he or she was not free to leave." (*Ibid.*)

In *People v. Bennett, supra,* 68 Cal.App.4th 396, a police officer saw Bennett speaking with a prostitute. The officer approached Bennett and asked whether he could talk to him for a moment. The officer remembered Bennett from a previous contact and asked whether he was still on parole. Bennett replied affirmatively and the officer asked

if he would be willing to wait in the patrol car while the officer " 'ran him for warrants.' " (*Id.* at p. 399.) Bennett agreed. The tone of the conversation was calm, and no physical force was required or threatened. (*Ibid.*) When it was subsequently determined that Bennett had violated parole, he was arrested. (*Ibid.*) *Bennett* concluded the initial contact between Bennett and the officer, during which the officer asked whether Bennett was on parole, was a "classic consensual encounter" which did not implicate the Fourth Amendment. (*Id.* at pp. 402-403.) The officer did not apply any physical or verbal force that might have caused a reasonable person to feel compelled to respond. Bennett's responses appeared voluntary, and the officer did nothing "to transmogrify the consensual tone of the conversation or stop Bennett from simply walking away." (*Id.* at p. 402.)

In *People v. Bouser, supra*, 26 Cal.App.4th 1280, a police officer driving his patrol car saw Bouser, in an alley known for drug dealing, standing near a dumpster looking for something. When he saw the officer, Bouser became nervous and walked in the opposite direction. The officer stopped his patrol car four feet behind Bouser, walked toward him, and said, " 'Hey, how you doing? You mind if we talk?' " (*Id.* at p. 1282.) Bouser stopped and agreed to talk to the officer, who inquired regarding Bouser's name, date of birth, and prior arrest history. He also asked what Bouser was doing in the alley. Bouser stated he had been visiting a friend, but could not provide the friend's address. The officer queried why, if Bouser had just concluded his visit with the friend, he was unable to provide the address. He ran a records check on Bouser, while making "small talk" for several minutes. The records check revealed Bouser had an outstanding warrant, and tar heroin was found in his pocket during a search incident to arrest. (*Id.* at p. 1283.) The appellate court rejected Bouser's contention that the encounter violated the Fourth Amendment. The officer's questions regarding what Bouser was doing in the alley and the request for identifying information did not implicate the Fourth Amendment, and the encounter did not ripen into a detention even when the officer ran the records check. (*Id.* at pp. 1284, 1287-1288.)

As is readily apparent, the instant matter is analogous to the foregoing cases. The officers did nothing more than ask Lewis a few questions without any suggestion Lewis

was restrained or unable to leave. Lewis's answers appear voluntary. There was no detention.

Lewis relies on *People v. Garry, supra,* 156 Cal.App.4th 1100, in support of his contrary contention. In *Garry,* a uniformed officer, armed with a baton and gun, was patrolling a high crime area near midnight, in his police cruiser, when he observed the defendant. The officer used his patrol vehicle's spotlight to illuminate the defendant and briskly walked toward him. The defendant appeared nervous, began walking backwards, and spontaneously stated, " ' "I live right there," ' " indicating a nearby house. The officer continued to walk toward the defendant and stated, " 'Okay, I just want to confirm that.' " In response to the officer's questions, the defendant admitted he was on parole but denied possessing weapons. The officer grabbed the defendant, who started "to pull away 'violently.' " (*Id.* at p. 1104.) The officer arrested and handcuffed the defendant and discovered cocaine in a search incident to arrest.

Garry concluded that the officer's actions, taken as a whole, "would be very intimidating to any reasonable person" (*People v. Garry, supra,* 156 Cal.App.4th at p. 1111), in that the officer bathed the defendant in light from his police vehicle and very rapidly walked toward him while questioning him about his parole status, disregarding his indication he was merely standing outside his home. "No matter how politely [the officer] may have stated his probation/parole question, any reasonable person who found himself in defendant's circumstances, suddenly illuminated by a police spotlight with a uniformed, armed officer rushing directly at him asking about his legal status, would believe themselves to be 'under compulsion of a direct command by the officer.' " (*Id.* at p. 1112.)

In contrast to *Garry,* here the officers did not rush at Lewis, or illuminate him with a police vehicle spotlight, facts the *Garry* court found dispositive in determining the initial encounter was a detention. Their actions were neither aggressive nor intimidating. *Garry* therefore does not assist Lewis.

Lewis makes several other contentions in support of his position, none persuasive. First, he urges that as soon as the officers displayed their badges and inquired into his

parole status, a detention occurred. The fact the officers identified themselves did not escalate the encounter into a detention. (*Florida v. Royer* (1983) 460 U.S. 491, 497 [the fact "that the officer identifies himself as a police officer, without more" does not "convert the encounter into a seizure requiring some level of objective justification"].) The display of a badge does no more than alert the defendant that the individual with whom he is speaking is a police officer, just as would an officer's uniform. Nor does the inquiry into his parole status require a finding the encounter was a detention. (*People v. Bennett, supra,* 68 Cal.App.4th at pp. 401-402.) Lewis urges that "the police themselves acknowledged that a detention had occurred" once they displayed their badges and asked about his parole status, "a matter that was uncontested at the suppression hearing." When asked, at the suppression hearing, what happened after displaying his badge, Officer Corrales stated, "We detained him. He said he had some narcotics on him and that he was on parole." Even assuming arguendo this answer can be interpreted as Lewis suggests – a conclusion we do not necessarily adopt – Corrales's understanding is not dispositive. An officer's intent to detain a subject is not relevant except insofar as his overt actions communicated his intent. (*People v. Verin, supra,* 220 Cal.App.3d at p. 556.) Lewis also asserts that the trial court found a detention occurred at this point. The trial court's comments are unclear. When ruling, it stated that *People v. Bennett, supra,* 68 Cal.App.4th 396, was "synonymous" with the instant matter. It further observed, "this case is distinguishable from *Bennett* because these officers were in plainclothes and this was a detention based on their identifying themselves as officers. It's a distinction without a difference. And the court's going to deny the motion." The court appears to have been responding to defense counsel's arguments regarding the officers' attire and the point at which the detention occurred. The trial court cannot have found a detention occurred when the officers identified themselves; had it made such a finding, it would have been obliged to grant the motion to suppress. Moreover, even if one officer and the trial court concluded a detention occurred, we exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment. (*People v. Maury, supra*, 30 Cal.4th at p. 384.)

In our view, no detention occurred until after Lewis stated he was on parole and possessed marijuana.

Lewis next asserts that an encounter cannot be consensual unless (1) the defendant is aware the individual with whom he is speaking is a police officer, and (2) explicitly agrees to speak with the officer. This is not the law. The test is not whether the subject has consented to speak with police, but whether a reasonable person would feel free to disregard the questions and go about his or her business. (*In re Manuel G., supra,* 16 Cal.4th at p. 821.) Indeed, in *Manuel G.* it was clear the defendant did *not* explicitly consent to talk to police; to the contrary, he stated he was going to contact " 'Internal Affairs,' presumably to complain about the deputy's conduct," stated he was tired of the Sheriff's Department contacting him, and then threatened to kill the deputy. (*Id.* at p. 811.) Nonetheless, the California Supreme Court found there was no detention because the encounter was consensual. (*Id.* at p. 820.) Further, the average person is likely to feel no compulsion to respond to questions posed by other civilians. The fact the defendant is unaware the persons with whom he is speaking are officers therefore does not support a finding the encounter was a detention.

Finally, in what is really the crux of his argument, Lewis urges that police officers "are not free to simply stop people walking on the streets, ask them if they are on parole and then, after getting a positive reply, search them." Essentially, Lewis advocates for a bright-line rule that police may not ask a subject if he or she is on parole unless they have a reasonable, articulable suspicion sufficient to justify a detention, or the subject's express consent to speak with them. Certainly, an officer's query whether a subject is on probation or parole is a factor relevant to Fourth Amendment analysis. Likewise, Lewis is correct that officers may not validate an otherwise unlawful *detention* by reference to a subsequent discovery that the subject is on parole. Lewis points to no authority, however, suggesting officers may not ask about a subject's parole or probation status unless they have reasonable suspicion crime is afoot, and we are aware of none. Lewis expresses concern that "police want to be given the authority to randomly ask people if they are on probation or parole and, if they answer affirmatively, search them."

However, the record does not establish such a pattern of police behavior and, in any event, we are here concerned only with the encounter between Officers Escobar and Corrales, and Lewis. Moreover, California law prohibits parole searches that are unreasonable, i.e., if made too often or at an unreasonable hour, are unreasonably prolonged, or for other reasons establishing arbitrary or oppressive conduct by the searching officer (e.g., when the motivation for the search is unrelated to rehabilitative, reformative or legitimate law enforcement purposes or is motivated by personal animosity toward the parolee). (*People v. Reyes* (1998) 19 Cal.4th 743, 753-754; see also *Samson v. California, supra,* 547 U.S. at p. 856.) These precepts sufficiently protect against the general concerns raised by Lewis. In any event, Lewis does not assert the instant search was conducted to harass him, and on this record we would be loathe to make such a finding. Further, Lewis ignores that, in addition to the fact he told officers he was on parole, he also admitted that he possessed marijuana, providing an alternative and independent lawful justification for the search.

In sum, the encounter between the officers and Lewis was consensual and did not ripen into a detention until Lewis told Escobar that he had marijuana and was on parole. Once Lewis told the officers he was in possession of marijuana, the officers had probable cause to arrest him and search him incident to arrest. (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1076.) Alternatively, once Lewis told Escobar he was on parole, a search of his person was legally permissible. Thus, the trial court did not err in declining to suppress the fruits of the search.[4]

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[4] Our conclusion makes it unnecessary for us to reach the People's argument that even if the consensual encounter ripened into a detention when the officers identified themselves, such a detention was supported by reasonable suspicion.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.